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IN THE

Supreme Court of the United States

October Term, 1970

No. ————

JAMES D. HODGSON, Secretary of Labor, *Petitioner*,
v.
LOCAL UNION 6799, UNITED STEELWORKERS OF AMERICA, AFL-CIO, *et al*, *Respondents*.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STEELWORKERS OF AMERICA, AFL-CIO, IN OPPOSITION

INTRODUCTION

The instant petition for a writ of certiorari filed by the Solicitor General, on behalf of the Secretary of Labor, does not in our judgment accurately describe the nature of the questions presented or the relevant facts which give rise to such questions. In addition, many of the relevant facts are omitted altogether. Precisely because of these serious shortcomings in the Secretary's Statement, we deem it necessary to set forth below in detail our position concerning these same subjects.

Counter-Statement of the Questions Presented

1. Whether the Secretary of Labor[1] may raise issues in an action under Title IV of the Labor Management Re-

[1] Hereinafter, "the Secretary".

porting and Disclosure Act of 1959 (29 U.S.C. 401)[2] which were not raised by any member in the union's internal protest procedure and are not germane to the protest actually filed.

2. Whether the union's rule requiring that a candidate for local union office have attended half (½) the regular monthly meetings in the twenty-one (21) months immediately preceding nominations is a "reasonable qualification" for candidacy, where attendance is not difficult for any member and the rule does not in practice preclude contests for union office.

Counter-Statement of the Case

A. The Failure to Protest the Reasonableness of the Meeting Attendance Rule in the Union's Internal Election Procedure.

The thrust of the Secretary's petition is devoted to exposing the alleged error in the opinion of the court below[3] holding that in the instant circumstances the Secretary lacked standing to challenge the validity of the union's meeting attendance rule. To insure that this Court can assess the Secretary's legal arguments in light of an accurate and relevant factual recitation, we feel constrained to set out this comprehensive counter-statement below.

Local Union 6799 (hereinafter "the Local") is and at all pertinent times has been chartered by and subordinate to the United Steelworkers of America, an international labor organization (hereinafter "the Union"). The Local conducts all its affairs pursuant to the Constitution of the International Union, the Local Union Elections Manual of the International Union, and the Standard By-Laws for Local

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[2] The relevant portions of this statute are set forth in Appendix E to the Secretary's petition for a writ of certiorari at pp. 45-47.

[3] The entire opinion is printed in Appendix A to the petition (pp. 19-26).

Unions issued by the International Union (Appendix C of the petition at p. 29).

The election challenged in this lawsuit was conducted by the Local on June 12, 1967 (*id.* at p. 37). It was a general election for all major local union offices.[4] The Union's Constitution establishes a detailed procedure which provides a member the right to file an election protest if he believes the election was improperly conducted for any reason. Under this procedure the protest must initially be raised before the Local Union and is ultimately resolved by the Union's International Executive Board. (Pl. Exh. 2, p. 22.)

The only member who challenged the Local's 1967 election was Nicholas Hantzis, an unsuccessful candidate for President[5] (Pl. Exh. 1, p. 15; Appendix A to the petition, p. 22, n. 3). At the Local Union's July 10, 1967 meeting, and in his subsequent written appeal to the Union's International Executive Board (dated July 18, 1967) Hantzis protested about a number of matters, including the charge that the Local Union stencilled and mimeographed campaign material for one of his opponents, Brother Rose. It is clear, however, that at neither stage in the internal union procedure did Hantzis' protest attack the reasonableness of the Union's meeting attendance rule; nor did it allege that the rule was applied in a non-uniform manner. (Appendix C to the petition at p. 39). This is not surprising since Hantzis did, in fact, satisfy the requirements of the rule.

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[4] Elections were held for the following offices: President, Vice-President, Recording Secretary, Financial Secretary, Treasurer, Guide, Inside Guard, Outside Guard and Three (3) Trustees (Appendix C of the petition at pp. 37-38). All "Tr." references are to the transcript of the trial in the district court. "R" refers to the record in the court of appeals and all "Exh." references are to the exhibits in the trial before the district court.

[5] In the election for President, Rose was elected; he received 191 votes as compared with 147 votes for Hantzis and 59 for Redell (*id.* at pp. 37-39). There were approximately 578 members in the Local Union as of April 1, 1967 (Tr. 28).

Indeed, the Secretary has expressly acknowledged in his answers to defendant's Interrogatories that Hantzis' protest did *not* afford the Union "fair notice" of these matters, nor did it "call upon defendants to correct any or all of the [se] matters." (R. 25). The matters which *were* raised in the Hantzis protest were decided adversely to him by the International Executive Board, thus exhausting Hantzis' abortive efforts to obtain recourse through the internal election protest machinery.

Thereafter, on October 11, 1967, Hantzis filed a complaint with the Secretary pursuant to Section 402(a) of the Act. In it, he complained once again about the use of Union facilities for preparing Rose's campaign literature and also questioned, for the first time, the reasonableness of the Union's meeting attendance requirement and the manner in which the rule was applied. (Appendix C to the petition at pp. 39-40). See Section 401(e) and (g) of the Act (29 U.S.C. 481(e) and (g)).

In the course of investigating this complaint, the Secretary became interested in all three issues. Approximately one-half year after the election, but prior to instituting this action, representatives of the Secretary discussed all these issues with legal counsel for the Union (*id.* at p. 41; Pl. Exh. 1, pp. 15-16). This was, to repeat, the *first time* that either the question concerning the reasonableness of the meeting attendance rule or its application was called to the Union's attention.

Precisely because of the belated injection of the meeting attendance issue, the Union took the position that the Secretary lacked standing to attack the meeting attendance rule in the instant suit filed under Section 402 of the Act.

The court below agreed. Faced with the task of achieving a delicate balance between two potentially conflicting objectives of the statute (i.e. a desire not to hamstring the Secretary's investigative powers and enforcement jurisdiction while simultaneously not rendering the exhaustion re-

quirement a nullify), the court defined the controlling legal standard as follows:

> ". . . Congress intended to empower the Secretary to assert [in a Section 402 action] those violations that are *fairly apparent from a member's protest to the union and no others*" (Emphasis added) (Appendix A to the petition at p. 22).

Applied to the instant facts, the court held that the Secretary lacked standing to sue on the meeting attendance rule since by his own acknowledgment the Hantzis protest did not by any stretch of the imagination afford the Union "fair notice" of this issue. (Appendix A to the petition at p. 21).

B. The Merits of the Union's Meeting Attendance Rule.

Insofar as the merits of the Union's rule is concerned, the Secretary's Statement of Facts is grossly inadequate. In summary form we shall explicate those additional relevant and undisputed facts which warrant this Court's attention. First, the Constitution of the Steelworkers International Union, which is applicable to each of its 3,700 local unions, requires that to be eligible for candidacy for elected office a member must have attended half the regular monthly meetings of the local union during the thirty-six (36) months preceding the election, with credit given for meetings the member could not attend because of his union activities or working hours (*id.* at p. 30).[6] Actually, however, because the Local Union was not formed until 1965, it held only 21 regular meetings prior to the June 1967 election, so that the effect of the rule at this Local was to require attendance (or credit) at only eleven (11) meetings (Pl. Exh. 1, p. 3).

Second, the regular monthly meetings only lasted approximately two (2) hours (Tr. 281) and attendance was not difficult for any member; all of the Local's members

[6] The term of office for each local union official so elected is three (3) years.

work at one plant[7] and the Union meeting hall is just a fifteen (15) minute automobile drive from the plant (Pl. Exh. 1, pp. 5-6).

Third, at the Local's May 1967 nomination meeting, 49 members were nominated as candidates for the elective offices; 22 of these declined nominations. Of the remaining 27 nominees, all but 3[8] satisfied the meeting attendance rule (Appendix C to the petition at p. 34) and appeared on the ballot as candidates. The net result was that each of the incumbent officers was challenged by one or more opponents who satisfied the meeting attendance requirement (*id.* at pp. 37-39). This is illustrative of the more general pattern which exists in Steelworker local union elections conducted throughout the country.[9] Stated otherwise, the record is devoid of any evidence that the rule operates to perpetuate incumbents.

Fourth, Constitutions of International Unions having 25% of all of America's union members impose meeting attendance requirements as a candidacy qualification for

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[7] All of the Local's members are employed at the Pomona, California plant of Land Division, Howmet Corporation (Tr. 26, 57).

[8] Cf. the Secretary's petition at p. 6.

[9] At trial, defendants offered two (2) exhibits designed to establish that at other Steelworkers' locals, the meeting attendance rule likewise did not preclude contests for union office (Tr. 415-418). Thus, Def. Exh. X showed the number of candidates who qualified and ran for President in each local union with 500 or more members within District 38 of the Steelworkers, which comprises our membership in the 14 Western States. Further, Def. Exh. W showed the number of candidates who qualified and ran for the five principal offices in each of the local unions whom the Secretary has sued on the identical ground that its meeting attendance rule is an unreasonable qualification within the meaning of Section 401 (e) of the Act.

The district court (per Crary, J) rejected these exhibits as irrelevant upon the Secretary's concession that there was no claim in this case that the rule precluded contests against incumbents (Tr. 418, 421).

local union office, and in all probability a much larger percentage of local unions have such a requirement.[10]

Fifth, the meeting attendance rule is designed to accomplish numerous legitimate union purposes, including the desire to increase attendance at meetings, to attempt to insure that candidates have demonstrated an interest in the union's problems and are familiar and better able to cope with the complexities and responsibilities attendant to holding office (Appendix C to the petition at pp. 33-34), and to attempt to insure that there is a check upon the unbridled control of the local's affairs by the incumbent officers between elections.

Finally, the Secretary has recognized the basic principle that meeting attendance requirements are "a reasonable means of encouraging participation in the affairs of the union" (Def. Exh. N, O, P, Q). The Secretary has published an Interpretative Manual announcing to the general public what he considers to be the proper interpretation of the statute which he is empowered to administer and enforce. Paragraph 422.250 of the Manual (Def. Exh. T), captioned "Participation in Union Affairs," states a general principle that, absent unusual circumstances, an eligibility rule designed to assure participation in and familiarity with union affairs is a reasonable candidacy qualification:

> "Qualifications reasonably designed to assure that candidates have participated in the affairs of the union

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[10] The 25% figure was derived from a survey of International Union Constitutions made by the Secretary's Director of Research (Tr. 305, 307). An additional 7% of union members are in unions whose International Union Constitutions expressly leave the matter to local union option (*ibid.*), and the Director of Research testified that some local unions in these Internationals have adopted meeting attendance requirements in their *local union* constitutions and by-laws (Tr. 310). There are 45,000 local unions in the United States (Tr. 311), and the Secretary has made no effort to determine how many have meeting attendance requirements in their constitutions and by-laws (Tr. 310-311).

and are sufficiently familiar with the industry in which the union operates, would not be considered unreasonable in ordinary circumstances, if uniformly imposed. In the absence of knowledge of any special circumstances which cast doubt upon the validity and reasonableness of any of the qualifications, they are not to be considered unreasonable in themselves." [11]

As one specific application of this principle, the Manual declares that a requirement of 50% meeting attendance over a 24 month period (which is *greater* than the 21 month period involved in the instant case) is a reasonable candidacy qualification, except where attending presents "an unusual degree of difficulty for a significant proportion of the membership; as for example, where the local had an extensive geographical jurisdiction." (Manual par. 422.206 Def. Exh. T).[12] At trial, the Chief of the Secretary's Elections Unit conceded that this exception for difficulty in attending is not applicable to the instant case.[13]

All three of the district courts [14] which have ruled on the

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[11] In light of the foregoing we find it totally disingenuous for the Secretary *now* to attempt to rely (see petition at pp. 6-7) on testimony of one of his own representatives to support a contrary position—namely, that the union's rule does not serve the intended purpose. The union "presented no testimony to support the contention that members who attend union meetings are better qualified to serve as officers . . ." (petition at p. 7) precisely because the Secretary's own interpretive rulings were predicated on the validity of this "contention".

[12] The Manual is silent as to the validity of a 50% meeting attendance requirement spanning 36 months, the period applicable to Steelworkers' local unions which, unlike Local 6799, are not newly formed.

[13] The Manual distinguishes 75% meeting attendance requirements which, it notes, have been judicially declared "unreasonable" absent extremely liberal excuse provisions for non-attendance. (Manual, par. 422.208 (Def. Exh. T).

[14] In addition to the district court decision in the instant case, see also *Shultz* v. *Local Union 1299, Steelworkers,* 73 LRRM 2673, 62 Lab. Cas. ¶ 10,720 (E.D. Mich.), and *Shultz* v. *Local 1150, Steelworkers* (S.D. Ind., Civ. Action No. —, IP 68 C-76, (May 19, 1970).

Steelworkers' meeting attendance requirement have concluded that it is not unreasonable and, in so doing, dismissed the suits filed by the Secretary alleging violations of Section 401(e) of the Act. Significantly, as shown above, the courts, in reaching this conclusion, were actually agreeing with the precise principles which the Secretary has previously enunciated as the proper interpretation of the Act but which he *now* seeks to discredit.

ARGUMENT

1. There is no compelling reason to grant the writ on the procedural question presented by the Secretary.

In *Wirtz* v. *Local Union No. 125, Laborers' International Union,* 389 U.S. 477 (1968), this Court was invited, but expressly declined, to decide "the merits of the Secretary's argument that a member's protest triggers a §402 enforcement action in which the Secretary would be permitted to file suit challenging *any* violation of §401 discovered in his investigation of the member's complaint." (*Id.* at 482) (Emphasis added.) In the instant action, once again, the Secretary places almost exclusive reliance (see petition at p. 14, n. 9) on the same argument in support of his efforts to obtain a writ as was made in *Laborers' International.* There is no more reason for this Court to decide that legal issue *now* than existed when *Laborers' International* was decided. The court below is the lone Court of Appeals to have passed upon the Secretary's argument. Unless and until there develops a conflict among the Courts of Appeals, the need for review by this Court is not apparent.

In any event, as we now show, the decision below is plainly correct, and does not warrant review. The court below resolved the procedural question in a sound and proper manner which comports with the legislative purpose.

Section 402 of the Act, 29 U.S.C. §482, provides in pertinent part:

"(a) A member of a labor organization—

(1) *who has exhausted the remedies available* under the constitution and by-laws of such organization and of any parent body or, (2) *who has invoked such available remedies* without obtaining a final decision within three calendar months after their invocation, may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of Section 401 . . .

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such action, bring a civil action against the labor organization . . ." (Emphasis added.)

Upon analysis of the quoted statutory language and the underlying legislative history, the court below held that the *only* way these provisions could be read as a harmonious whole was to conclude "that Congress intended to empower the Secretary to assert those violations that are fairly apparent from a member's protest to the union and no others" (see Appendix A to the petition at p. 22). That conclusion, in the court's view, maintains the delicate balance between the dual Congressional objectives of according the Secretary substantial enforcement powers and preserving union self-government.

The reasoning of the court below, in pertinent part, was as follows:

"Section 402 is ambiguous. Its exhaustion of remedies precondition logically suggests that the union must be afforded fair notice of the purported wrong and a reasonable time ["three calendar months" is the period designated in 402(a)(2)] to take corrective measures through its own internal machinery before complaint

may be filed with the Secretary; yet the section also provides that the complaint (to the Secretary) may allege *"any"* violation and the Secretary must bring a civil action to set aside the invalid election within sixty days after receiving the complaint. To allow the Secretary wide ranging power to urge "any" violation *would in effect nullify the exhaustion requirement;* not only might the union be completely unaware of the asserted violation prior to the suit but, even if the Secretary gives notice before filing suit, the "three calendar months" period allowed for corrective action by the union would be rendered virtually meaningless. However, if the broad language appearing in the section is more narrowly construed, these inconsistencies disappear and the several provisions become harmonious." (See Appendix A to the petition at pp. 22-23).

In his petition, the Secretary places heavy reliance on his "broad investigative powers," his "exclusive enforcement jurisdiction," and "his vital role in protecting the public," [15] to support the far reaching argument that once having conducted his investigation there are *absolutely no limits* to the §401 violations he can assert in a §402 suit. The simple answer is, as the court below aptly pointed out, that to achieve this result the Secretary would have us read the exhaustion principle out of the statute, contrary to the express legislative intent.

One of Congress' main concerns in adopting the Act was to give full play to internal union appeals procedures in the resolution of election disputes, and to inject the Secretary and the courts only where those internal mechanisms proved incapable or unwilling to resolve these disputes. As this Court stated in *Wirtz* v. *Local 153, Glass Bottle Blowers Ass'n.* 389 U.S. 463, 472-473 (1968): "Congress has explicitly told us that these provisions were designed to pre-

[15] See the Secretary's petition at p. 12.

serve 'a maximum amount of independence and self-government by giving every international union the opportunity to correct improper local elections.' S. Rep. No. 187, 86th Cong., 1st Sess. 21, 1 Leg. Hist. 417."

The Senate Report expressed the "general approach of the bill" thusly:

> "A strong independent labor movement is a vital part of American institutions. . . . The overwhelming majority [of unions] are honestly and democratically run. *In providing remedies for existing evils the Senate should be careful [not] to undermine self-government within the labor movement.* . . .
>
> "In acting on this bill the committee followed three principles:
>
> "1. The committee recognized the desirability of minimum interference by Government in the internal affairs of any private organization. Trade unions have made a commendable effort to correct internal abuses; hence the committee believes that only essential standards should be imposed by legislation. (Moreover, in establishing and enforcing statutory standards great care should be taken not to undermine union self-government. . . .") (S. Rep. No. 187, 86th Cong. 1st Sess. (1959), pp. 5, 7; emphasis ours.)[16]

Significantly, as described above, this "general approach," which the Secretary now seeks to render meaningless, was carried forward into Section 402 of the Act. See also, S. Rep. No. 187, 86th Cong., 1st Sess. (1959), p. 31.

Consistent with the foregoing, it is obvious that if a member does not pursue his internal union remedies *at all*, the Secretary cannot thereafter institute suit. *Wirtz* v. *Local Union No. 125, Laborers' International Union, supra,* 389

[16] See *Wirtz* v. *Local 153, Glass Bottle Blowers Ass'n., supra,* 389 U.S. at 471, n. 10.

U.S. at 482, n. 15.[17] Logic dictates a similar result where, as here, a member pursues his internal union remedies as to one issue but the Secretary thereafter files suit to set aside the election on a wholly different issue.

In addition to the Ninth Circuit's instant decision, the district courts have almost uniformly rejected the Secretary's claim that he has roving jurisdiction to attack aspects of a union election completely unrelated to members' internal union protest. Instead, they have ruled that the Secretary may sue only with respect to matters which the union had a fair opportunity to consider and redress in connection with the member's own protest to the union. See, *Wirtz* v. *Local 257, Glass Bottle Blowers,* 273 F. Supp. 746 (D. N.J. 1967); *Wirtz* v. *Local 174, American Federation of Musicians,* 272 F. Supp. 294 (D. La. 1967); *Wirtz* v. *Local Union No. 450,* 63 LRRM 2105, 54 Lab. Cas. ¶ 11,450 (S.D. Tex. 1966); *Wirtz* v. *Local Union No. 406,* 254 F. Supp. 963 (E. D. La. 1966); *Wirtz* v. *Local Union 169,* 246 F. Supp. 741, 60 LRRM 2540 (D. Nev. 1965).[18]

Indeed, in *Laborers' International,* upon which the Secretary mistakenly places major reliance (petition pp. 8-11), this Court's opinion strongly suggests a disposition to reach the same result. Thus, the Court there stated that on the facts before it the member's internal union protest afforded the union "fair notice" of the matter about which the Secretary ultimately sued, 389 U. S. at 481, and it added:

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[17] Section 601 (29 U.S.C. §521) bestows upon the Secretary broad investigatory powers even absent a member's complaint. However, in such circumstances the Secretary cannot initiate a §402 action irrespective of what violations his investigation discloses; his remedy is limited to disclosure of such violations to the interested parties.

[18] The Secretary's petition (p. 14, n. 19) cites only two cases to the contrary and it is not at all clear that one of those (*Wirtz* v. *Local 1377, IBEW,* 63 LRRM 2029, 54 Lab. Cas. ¶ 11,391 (N.D. Ohio)) actually supports the broad interpretation championed by the Secretary.

"It is true that *the exhaustion requirement was regarded by Congress as critical to the statute's objective of fostering union self-government.* By channeling members through the internal appellate processes, Congress hoped to accustom members to utilizing the remedies made available within their own organization; at the same time, however, unions were expected to provide responsible and responsive procedures for investigating and redressing members' election grievances. *These intertwined objectives are not disserved but furthered by permitting the Secretary to include in his complaint at least any §401 violation he has discovered which the union had a fair opportunity to consider and redress in connection with a member's initial complaint.*

". . . In default of respondent's action on a violation *which it had a fair opportunity to consider and resolve in connection with [the member's] protest,* the Secretary was entitled to seek relief from the court. . . ." (389 U.S. at 484, 485, emphasis added).

In sum, the "fair notice" standard enunciated by this Court in *Laborers' International,* and adopted by the court below, strikes an appropriate balance between the dual Congressional objectives of fostering union self-government and according the Secretary substantial and meaningful enforcement powers.

It is likewise evident that the court below properly applied the "fair notice" standard in the instant factual context. Here, unlike *Laborers' International,* the Secretary concedes that the internal union protest afforded the Union neither fair notice of the matters ultimately raised in his lawsuit nor a fair opportunity to consider and redress such matters. Simply put, it is hard to conceive of issues more disparate than those raised by Hantzis' protest (re the conduct of the election itself) and the Secretary's contentions which were dismissed by the court below (re the eligibility requirement for candidacy).

The Secretary's remaining arguments have little force. In urging that "it makes little sense to restrict the scope of the lawsuit brought by the Secretary to the four corners of the complaint originally made by the union member" (petition at p. 12), the Secretary is just raising a strawman. Of course, union members are laymen and their written protests should be construed liberally. As such neither the Union's position nor the opinion of the court below disputed the self-evident fact that it would be grossly unfair and supertechnical to artificially limit the Secretary's enforcement powers merely because the members' protest was inartfully worded. But this is of no relevance whatsoever here. As we have explained in detail above, the extreme variance between the Secretary's complaint and the protest filed by Hantzis with the Union is one of *substance* and not merely a matter of form, style or language.

Finally, the Secretary's argument is likewise unpersuasive insofar as he attempts to demonstrate (petition p. 13) that his pre-litigation notice to the Union accorded it a "fair opportunity" to resolve the alleged violations arising out of the meeting attendance requirement. This contention, as the court below held, is spurious.[19] The Secretary always notifies the Union before instituting suit; accordingly if this argument were to prevail it would mean that the Secretary could nullify the exhaustion requirement of the statute through the simple expedient of sending a formal pre-litigation letter to the Union raising claims of alleged violations wholly unrelated to those contained in the member's internal Union protest.

In *Laborers' International* this Court implicitly rejected the validity of the Secretary's argument. The Court did *not* say that the Act was satisfied if the Union had notice from

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[19] It was also expressly rejected in *Wirtz* v. *Local 257, Glass Bottle Blowers*, 273 F. Supp. 746 (D. N.J. 1967).

the Secretary before suit was filed. Rather, the Court said that the Secretary was permitted:

> ". . . to include in his complaint at least any §401 violation he has discovered which the Union had a fair opportunity to consider and redress *in connection with a member's initial complaint*" (389 U.S. at 484, emphasis added).

It is clear therefore, that the Court was referring to notice received by the Union from a member, in the course of its internal protest machinery, and *not* notice received from the Secretary *after* the Union's highest judicial tribunal has acted.

Not only does the Secretary's argument run counter to the exhaustion language of the statute, it likewise is totally at odds with the objectives Congress sought to achieve in incorporating this requirement into the Act.[20] To illustrate, as we have shown above, Congress wanted to give Unions' judicial tribunals the first opportunity to decide internal Union controversies. But under the Secretary's theory, Unions would not get that opportunity: the Secretary's theory would impose no obligation upon a member to present all his grievances to the Union's judicial body. He need present only one, and that would suffice to give the Secretary *carte blanche*.

2. If the Court is disposed to grant the Secretary's writ on the exhaustion of remedies issue, the Union would join in his further request that the Court likewise decide the substantive question whether the Union's meeting attendance rule is a "reasonable qualification" for candidacy.

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[20] In *Shultz* v. *Local Union 1299, Steelworkers, supra* and *Shultz* v. *Local 1150, Steelworkers, supra,* two district courts held, prior to the issuance of the decision below, that the Secretary's pre-litigation notice satisfied the exhaustion principle by providing the Union a fair opportunity to consider and redress its alleged violations. Those district court decisions are now on appeal to the Sixth and Seventh Circuits respectively.

In addition to this proceeding, the Secretary has initiated lawsuits challenging the elections of seven other Steelworkers' local unions[21] on the same ground, i.e., the alleged unreasonableness of the Steelworkers' requirement that to be eligible for candidacy, a member must have attended half the regular meetings of his local union during the 36 months preceding the election, with credit given for meetings the member could not attend because of his union activities or working hours (Appendix C to the petition at p. 30; Pl. Exhibit 2, p. 48).

In summary fashion, we discuss below the primary factors which support the reasonableness of our rule and which, significantly, persuaded each of the three district courts that have passed upon the merits of the rule to conclude that it is reasonable.

The rule serves legitimate trade union purposes. It encourages attendance at the union's official business meetings; it requires dissidents to attend meetings, thereby providing a check against arbitrary and unbridled control of the union affairs by incumbent officers during their term of office; and it is designed to assure that the candidates will be members who have demonstrated an interest in the union's affairs and who will be better able to cope with the complexities and responsibilities attendant upon holding office.[22] The legitimacy of the Union's objectives is undisputed; indeed, the Secretary has repeatedly recognized in the past that these same objectives would validate a meeting attendance requirement at least of two year's duration.[23]

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[21] See, for example, the cases cited at n. 14, *infra*.

[22] The district court below so held (Appendix C to the petition at pp. 33-34):

> "The meeting attendance requirement is designed to increase attendance at meetings and insure candidates who have demonstrated interest in union problems, are familiar with them, and better qualified to serve as officers of the Union."

[23] See our prior discussion of the Secretary's Interpretative Manual at pp. 7-8, *supra*.

The rule does not by its terms disqualify any member from becoming a candidate. Every member can qualify simply by devoting an average of two hours every other month to the affairs of his union, attending a meeting held in a nearby hall readily accessible to the entire membership.

In these circumstances the Secretary's conclusionary argument (petition pp. 15-16) that the rule "renders" ineligible a high percentage of the members in the Local cannot withstand scrutiny. The point is, as the district court below found, that every member could have qualified simply by attending half the meetings.[24] Contrary to the Secretary's position (petition pp. 15-16) this rule in unlike those which *prevent* members from qualifying who wish to do so —e.g., the "prior office holding" rule declared invalid by this Court in *Wirtz* v. *Hotel, Motel and Club Employees Union, Local 6,* 391 U.S. 492 (1968). As such, the Secretary's exclusive reliance on *Hotel Employees* to support his claim that the high percentage of ineligible members "would seem to render the qualification invalid *per se*" (petition p. 16) is totally misplaced. Indeed, this argument is itself inconsistent with the Secretary's previously announced interpretation of the Act—for in upholding 50 percent meeting attendance rule for a two-year period the Interpretative Manual does not state any exception for cases where only a small percentage attend.[25]

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[24] "It is a reasonable requirement, because anyone who wanted to comply with it could have complied by attending, or through the liberal work excuse provision" (Appendix C to the petition at p. 34).

[25] Sometime in the mid-1960's, however, the Secretary instituted a lawsuit against another union based on the theory that an otherwise reasonable rule was invalidated if only a small percentage attended. That lawsuit was withdrawn *only a few months prior to the election involved in the instant case.* In explaining the withdrawal, the Department of Labor stated that the Secretary had conducted "a general review of attendance requirements" and had concluded that a

Of equal importance, the Union's rule is not at odds with the essential evil that Congress sought to eradicate in enacting Title IV—namely, the practice of a few unions to structure their election machinery in such a fashion that it was virtually impossible to remove entrenched incumbent officers. This legislative objective is in no way thwarted by the Steelworkers' instant rule. As shown in the Counterstatement, the rule does not, in practice, prevent opposition to the incumbent union officers. Here, all incumbents were challenged by rivals who qualified under the rule (including the complainant Hantzis) and this same pattern exists throughout the Union.

Based on the foregoing, and in light of the widespread presence of meeting attendance requirements applicable to union elections generally and Congress' expressed desire not to regulate every detail of union elections or impose inflexible rules which would hinder diversity in the administration of democratic election procedures,[26] we submit that the instant rule is not an "unreasonable qualification".

CONCLUSION

For the foregoing reasons, the Secretary's petition for a writ on the procedural question should be denied. If, however, the writ is granted, the Court should also decide the

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rule should *not* be invalidated simply because a small percentage actually qualify. (Def. Exh. Q). Thus, at the time of the election herein, the Secretary's view was that small percentage does not invalidate (Tr. 163). *He changed his mind again when he decided to institute the present action,* as the Chief of his Elections Unit acknowledged (Tr. 164).

[26] See, for example, S.Rep. No. 187, 86th Cong., 1st Sess. (1959, p. 7; *Wirtz* v. *Local 153, Glass Bottle Blowers, supra,* 389 U.S. at 471.

question which the court below did not reach, i.e., the reasonableness of the Union's meeting attendance rule.

Respectfully submitted,

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